

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CPA LEAD, LLC,

Plaintiff(s),

v.

ADEPTIVE ADS LLC, et al.,

Defendant(s).

Case No. 2:14-CV-1449 JCM (CWH)

ORDER

Presently before the court is plaintiff's motion to reconsider the magistrate judge's ruling on attorneys' fees and costs. (ECF No. 166). Defendant filed a response. (ECF No. 167). Plaintiff did not file a reply, and the deadline to do so has passed.

**I. Background**

The facts of the instant case are familiar to the court and the parties and will not be described at length in this order. Plaintiff runs an advertising network and internet technology platform. Defendant worked as a high-level employee for plaintiff from 2010 through June 4, 2013. Plaintiff alleges that defendant unlawfully copied and downloaded thousands of electronic files containing plaintiff's confidential and trade secret information in violation of its policies and intellectual property rights. Plaintiff claims that defendant misappropriated plaintiff's source code, programming techniques, client lists, and formulas, among other information.

Plaintiff filed its fourth motion to compel and for an award of attorneys' fees and costs. (ECF No. 144). Defendant filed a response in opposition (ECF No. 152), and plaintiff filed a reply. (ECF No. 156). After reviewing the parties' briefs and conducting a hearing, Magistrate Judge Hoffman awarded plaintiff fees and costs in the amount of \$8,075, to be paid by defendant at the conclusion of the case. Despite this victory, plaintiff filed the instant motion seeking additional

1 attorneys' fees of over \$64,000 for their first two motions to compel and leave to amend. (ECF  
2 No. 166).

### 3 **II. Legal Standard**

4 The court reviews a motion to reconsider a magistrate judge's ruling under the "clearly  
5 erroneous or contrary to law" standard set forth in 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P.  
6 72(a). "A finding is 'clearly erroneous' when, although there is evidence to support it, the  
7 reviewing court on the entire evidence is left with the definite and firm conviction that a mistake  
8 has been committed." *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948); *see also*  
9 *Anderson v. Equifax Info. Services LLC*, 2007 WL 2412249, at \*1 (D. Or. 2007) ("Though section  
10 636(b)(1)(A) has been interpreted to permit de novo review of the legal findings of a magistrate  
11 judge, magistrate judges are given broad discretion on discovery matters and should not be  
12 overruled absent a showing of clear abuse of discretion.").

### 13 **III. Discussion**

14 Plaintiff argues that the magistrate judge's decision is clearly erroneous because  
15 defendant's objections to the first two motions to compel were not substantially justified, the  
16 motion to amend was a result of defendant's discovery conduct performed in bad faith, and that  
17 the court was bound by Fed. R. Civ. P. 37(a)(5)(A).

18 Plaintiff's primary argument boldly asserts that an award of fees is "**mandatory** because  
19 the requested discovery was provided *after* Plaintiff's motions to compel were filed." (ECF No.  
20 166 (citing Fed. R. Civ. P. 37(a)(5)(A))). Unfortunately for plaintiff, rule 37 contains a number of  
21 other considerations to which the court must adhere. Rule 37(a)(5)(A) *also* states that a court "must  
22 not order this payment if: (i) the movant filed the motion before attempting in good faith to obtain  
23 the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response,  
24 or objection was substantially justified; or (iii) other circumstances make an award of expenses  
25 unjust."

26 However, because both the first and second motions to compel were granted in part and  
27 denied in part, it is rule 37(a)(5)(C), not rule 37(a)(5)(A), that applies. Rule 37(a)(5)(C) states that  
28 "[i]f the motion is granted in part and denied in part, the court may issue any protective order

1 authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the  
2 reasonable expenses for the motion.”

3 Consequently, Magistrate Judge Hoffman was subject only to the liberal requirements of  
4 rule 37(a)(5)(C) and was not required to make a finding that the defendant’s opposition was  
5 “substantially justified.” Although plaintiff is now astonished that the court did not grant its request  
6 for over \$64,000 in fees, during the hearing it expressly agreed that the decision for sanctions was  
7 at the court’s discretion:

8  
9 THE COURT: So the Rule 37 question, when you have a -- when  
10 you have a mixed bag of granting and denying parts of your  
11 discovery requests, then it leaves the decision on sanctions to the  
12 discretion of the Court.

13 MR. FOUNTAIN: Oh, certainly, Judge.

14 THE COURT: Okay.

15 MR. FOUNTAIN: And we don't dispute that.

16 THE COURT: Okay.

17 (ECF No. 164).

18 Plaintiff clearly understood rule 37 prior to the filing of this motion. Magistrate Judge  
19 Hoffman was not required to award expenses and plaintiff now suggests. Magistrate Judge  
20 Hoffman denied plaintiff’s requests for attorneys’ fees for the motions to compel and motion to  
21 amend because:

22 [O]n the first and the second motions to compel, we had an extensive  
23 discussion. And there were some parts that were granted, some parts  
24 that were denied, and it was -- it was kind of a mishmash of issues  
25 trying to -- trying to clarify what ought to be produced and what not  
26 -- would not be produced. So I don't see a reason to sanction  
27 defendant for the first and second motions to compel. I also don't see  
28 a basis to sanction defendant because of the need for the leave to  
amend the complaint. There were -- there were numerous reasons to  
extend the deadlines that needed to be satisfied . . . . And to -- to  
sanction defendant for all of that work, I think, would be unjust.

(ECF No. 164). Magistrate Judge Hoffman further made clear to plaintiff that “there were some  
times that -- that your request was considered to be too broad . . . . You did substantially prevail

1 on the great majority of those, because I ordered them to be ordered in some fashion. But I  
 2 understood why the defendant did what he did.” (*Id.*). Whether to award attorneys’ fees was at the  
 3 magistrate judge’s discretion, and plaintiff presents no compelling evidence to suggest that his  
 4 determination was clearly contrary to law.

5 Even if Magistrate Judge Hoffman was bound by rule 37(a)(5)(A), he quite clearly made a  
 6 finding that defendant’s nondisclosure, response, or opposition was 1) substantially justified and  
 7 2) that an award of sanctions would be unjust, both of which are in accordance with Rule  
 8 37(a)(5)(A).

9 Plaintiff also argues that Magistrate Judge Hoffman committed a clear error of law in  
 10 declining to award attorneys’ fees arising out of plaintiff’s motion to amend. Although plaintiff  
 11 submits that the magistrate judge only declined to award fees because he was unsure whether he  
 12 had the authority to award those fees, it was clear from the outset of the hearing that the magistrate  
 13 judge believed, and the record reflects, that there were a number of reasons that necessitated  
 14 plaintiff’s filing of a motion for leave to amend the complaint. (ECF No. 144). Plaintiff’s excessive  
 15 rhetoric cannot change the record presented. Magistrate Judge Hoffman was not obligated to award  
 16 over \$64,000 in attorneys’ fees to plaintiff and none of plaintiff’s arguments meet the high standard  
 17 necessary to prevail on a motion to reconsider.

18 Having reviewed the record and the underlying briefs, the court finds that Magistrate Judge  
 19 Hoffman’s ruling was neither clearly erroneous nor contrary to law.

#### 20 **IV. Conclusion**

21 Accordingly,

22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff’s motion to  
 23 reconsider the magistrate judge’s ruling on attorneys’ fees and costs (ECF No. 166) be, and the  
 24 same hereby is, DENIED.

25 DATED June 2, 2016.

26   
 27 UNITED STATES DISTRICT JUDGE  
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